for the damages paid the employee. *Hood & Sons* v. *Maryland Casualty Co.*, 206 Mass. 223. See NOTES, p. 221.

INSURANCE — RIGHTS OF BENEFICIARY — MURDER OF INSURED BY BENEFICIARY. — After murdering the insured, the beneficiary of a life insurance contract sought to recover from the insurer the amount of the policy. *Held*, that he cannot recover. *Filmore* v. *Metropolitan Life Ins. Co.*, 92 N. E. 26 (Oh.).

After the murder of the insured by the beneficiary the insurance company admitted liability upon the policy. The administrator of the insured and the administrator of the beneficiary each claimed the proceeds. *Held*, that the administrator of the insured is entitled to recover. *Anderson* v. *Life Insurance Co. of Virginia*, 67 S. E. 53 (N. C.). See NOTES. p. 227.

INTERSTATE COMMERCE — WHAT CONSTITUTES INTERSTATE COMMERCE — FOREIGN CORPORATION PREPARING OUTSIDE STATE AND EXHIBITING IN IT ADVERTISEMENT OF LOCAL BUSINESS. — A foreign corporation contracted with a resident of Michigan to prepare and exhibit for three years in Michigan a sign, bearing an advertisement of the resident's business. The sign was to be prepared outside the state. In an action by the corporation for the sum due it on the contract after two years' exhibition, the defendant showed that the plaintiff had not fulfilled the requirements for doing business laid down by a statute which did not apply to interstate commerce. *Held*, that the transaction does not constitute interstate commerce. *Imperial Curtain Co.* v. *Jacob*, 127 N. W. 772 (Mich.). See NOTES, p. 230.

JUDGMENTS — COLLATERAL ATTACK — PUNISHMENT FOR CONTEMPT. — In contempt proceedings, the defendant contended that there were not sufficient grounds for granting the order which he had disobeyed. *Held*, that this defense is invalid. *Starkweather* v. *Williams*, 76 Atl. 662 (R. I.).

If a decree is utterly void, the party affected is justified in disregarding it, and may attack its validity when prosecuted for contempt. *Dodd* v. *Una*, 40 N. J. Eq. 672. A decree may be void because the court has no jurisdiction over the parties or subject matter. *In re Sawyer*, 124 U. S. 200. Or, a court having authority to hear the cause may grant relief of a kind that lies without its jurisdiction. *McHenry* v. *State*, 91 Miss. 562. When, however, the court has jurisdiction, the fact that an order was erroneously or improvidently issued does not justify disobedience. The proper remedy is an appeal on the merits. *Erie Ry. Co.* v. *Ramsey*, 45 N. Y. 637; *Clark* v. *Burke*, 163 Ill. 334.

LANDLORD AND TENANT — ASSIGNMENT AND SUBLETTING — SUB-LESSEE'S BREACH OF COVENANT TO REPAIR: MEASURE OF DAMAGES. — In 1855, A leased premises for ninety-nine years to B, who covenanted to repair. In 1887 B sublet to C, who covenanted to repair in the same terms as those of the head lease. In 1908 A sued B for failure to repair, and B, in addition to damages, paid a fine and costs to avoid a forfeiture. B thereupon sued C on his covenant, and sought to include in his damages the costs of the former action. *Held*, that he cannot recover the costs. *Clare* v. *Dobson*, *London Times*, Oct. 21, 1910, p. 3 (K. B. D.).

If C's covenant were to perform the covenant in the head lease, it would be a covenant of indemnity and B's costs would be recoverable. *Hornby* v. *Cardwell*, 8 Q. B. D. 329. But a covenant by a sub-lessee to repair, although in the terms of the lessee's covenant, is not a covenant of indemnity. *Pontifex* v. *Foord*, 12 Q. B. D. 152. The rule of damages, however, in breach of contract covers damages which might reasonably have been contemplated by both parties when the contract was made. *Hadley* v. *Baxendale*, 9 Exch. 341. Under

this rule, in cases of sale and re-sale, the vendee has been allowed to recover from the vendor his costs in defending an action brought by the sub-vendee for breach of implied warranty. *Hammond & Co.* v. *Bussey*, 20 Q. B. D. 79. See FOA, LANDLORD AND TENANT, 4 ed., 234. But the decision in the principal case rests on good authority. *Penley* v. *Watts*, 7 M. & W. 601; *Walker* v. *Hatton*, 10 M. & W. 249. B, who was himself in default, might have avoided this added expense by paying A before suit was brought. The costs are therefore too remote to have been reasonably within the contemplation of the parties as probable damages arising from C's breach.

LIBEL AND SLANDER — PRIVILEGED COMMUNICATIONS — PUBLICATION INVITED OR PROCURED BY PLAINTIFF. — The defendant at the plaintiff's request repeated at a club meeting an accusation against the plaintiff, made originally to the plaintiff alone. *Held*, that the publication was privileged. *Shafer* v. *Haupt*, 58 Pitts. Leg. J. (Pa., Allegheny Co. C. P., July 6, 1910).

The plaintiffs induced A to write a letter to the defendant, expecting a defamatory reply on which they could base an action. *Held*, that the plaintiffs caused the publication and cannot recover. *Melcher* v. *Beele*, 110 Pac. 181 (Colo.).

Many authorities agree with the Pittsburgh case in putting the defense in such cases on the ground of conditional privilege. *Warr* v. *Jolly*, 6 C. & P. 497; *Billings* v. *Fairbank*, 136 Mass. 177. Other cases hold that, at least where the plaintiff authorizes the publication in order to base an action thereon, the rule of *volenti non fit injuria* applies. *Sutton* v. *Smith*, 13 Mo. 120; *Heller* v. *Howard*, 11 Ill. App. 554. It is submitted that this is the true ground of defense in both cases. The defense of conditional privilege seems properly to be based on the defendant's right to speak in his own interest, or on a duty to speak in the interest of others. Neither of these elements is present in these cases. Furthermore, although the existence of wrong motive would defeat conditional privilege, it is submitted that in these cases the plaintiff would not be allowed to set up the defendant's wrong motive as a ground for his recovery.

LIMITATION OF ACTIONS — NATURE AND CONSTRUCTION OF STATUTE — MUNICIPAL CORPORATIONS AS AFFECTED BY STATUTE. — In an action by a city to recover damages for injuries to a bridge, the defendant proved that the claim had not accrued within the period of limitation. *Held*, that the action cannot be maintained. *City of Chicago* v. *Dunham Towing & Wrecking Co.*, 92 N. E. 566 (Ill.).

Against the state, as sovereign, no time runs. *Lindsey* v. *Lessee of Miller*, 6 Pet. (U. S.) 666. But where the state is merely a nominal party, statutes of limitations apply. *Miller* v. *State*, 38 Ala. 600. *Cf. Wasteney* v. *Schott*, 58 Oh. St. 410. And where the state becomes a member of a trading company, its claims may be barred. *Bank of the United States* v. *M'Kenzie*, 2 Brock. (U. S.) 393. *Contra, President and Directors of the State Bank of Illinois* v. *Brown*, 2 Ill. 106. Many cases hold that all governmental agencies except the state are subject to the statute under all circumstances. *Hartman* v. *Hunter*, 56 Oh. St. 175; *Knight* v. *Heaton*, 22 Vt. 480. But by the weight of authority, public rights, enforced by cities or counties, are not lost by lapse of time. *Greenwood* v. *Town of La Salle*, 137 Ill. 225; *City of Osawatomie* v. *Board of Commissioners of Miami County*, 78 Kan. 270. And the better cases hold that the statute does not bar claims of public institutions, such as schools and hospitals. *Eastern State Hospital* v. *Graves' Committee*, 105 Va. 151. See 20 HARV. L. REV. 644. It has even been held that where, by legislation, the statute of limitations runs against the state, still property devoted to public uses, such as streets, is not lost by adverse possession. *Ralston* v. *Town of Weston*, 46 W. Va. 544. *Contra, City of St. Paul* v. *Chicago, Milwaukee, & St. Paul R. Co.*,